U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 216 54354 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Information Management Systems from the University of California (UC), Berkeley. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing

> significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, data mining, and that the proposed benefits of his work, improved prediction of consumers' future activity, fraud detection, and identification of terrorist activity, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In evaluating this question, the director stated the following:

> The petitioner has not established that there is any real urgency to his entry into the United States in an immigrant status. . . . In fact, the petitioner must show that by not being given immediate immigrant status the national interest of the United States would actually be harmed. The petitioner has failed to establish that such harm to the national interest would occur if his employer took the extra time to obtain a labor certification through the normal labor certification process.

The director then noted the petitioner's nonimmigrant status and concluded that the labor certification process could be completed prior to the expiration of that status.

The language used by the director does not reflect the proper standard set forth in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 215. That decision does state that the national interest waiver was not intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. This language, however, merely emphasizes that the inconvenience of the process itself is not an argument to waive the requirement. It does not imply that the petitioner must demonstrate that there is any "urgency" to his adjustment to lawful permanent resident status. In fact, the AAO clearly stated that the inapplicability of the labor certification process is not, in and of itself, a basis to waive that process. *Id.* at 218, n. 5. Thus, had the petitioner demonstrated that the labor certification process would have lasted longer than his nonimmigrant status, that information would not have justified the waiver. In light of the above, the director erred in making this issue the focus of his decision.

The appropriate standard for evaluating waiver requests is set forth earlier in the AAO's precedent decision. In discussing the standard for evaluating whether the alien will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications, the AAO indicated that it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The footnote to this statement provides that the petitioner must demonstrate a past history of demonstrable achievement with some degree of influence on the field as a whole. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks.

The petitioner has submitted 14 witness letters, many of which are from individuals who are demonstrably independent of the petitioner. One of those witnesses, [redacted] is the Study Director and Senior Program Officer at the Computer Science and Telecommunications Board, The National Academies. Despite the submission of this letter, the director requested from a recognized entity such as the National Science Foundation without identifying any deficiencies in the letter from [redacted] In his final decision, the director concluded that the letters "are more akin to reference letters than to testimonials to his individual potential to benefit the country on a national impact level." While the distinction between these two types of letters is not immediately clear, any implication that the letters fail to detail how the petitioner might benefit the national interest is not supported by the letters themselves. Moreover, as noted by the petitioner on appeal, the director failed to address the objective evidence submitted in support of the assertions in the letters, such as the evidence that the petitioner's work is frequently downloaded and that independent researchers have cited his work.

Two coauthors, [redacted] submit letters in behalf of the petitioner. [redacted] a professor at UC Berkeley, asserts:

> [The petitioner's] work is groundbreaking. There are no parallels to it. He combines the best of mathematical modeling, operations research techniques, statistical analysis, knowledge of theory and practice of information storage and retrieval systems and user-computer interaction, and an ability to implement his ideas in a working environment.

[redacted] a former dean at UC Berkeley and President of the American Society for Information Science and Technology, provides more detail about the petitioner's work. He states that the petitioner's "ingenuity advanced our understanding of how" to know where to search first, search next and stop searching when using multiple networked digital libraries. The petitioner's techniques achieve "more cost-effective searching by using intelligent decision algorithms to determine where to search next, depending on individual marginal cost-benefit of extending the search to one more data repository." In a project funded by the Defense Advanced Research Projects Agency (DARPA), the petitioner "developed the infrastructure of an intelligent software agent-based search support system using optimization techniques and implement that system in the Web environment using numerous programming tools." [redacted] notes that searches are complicated by the fact that "the contents of databases are commonly indexed and categorized differently in different databases." He concludes that the petitioner's work "enables users to use their own languages in searching and make expert use of metadata vocabularies in unfamiliar databases."

[redacted] Senior Management for the Application Development Group at E.piphany Engineering, asserts that the petitioner's work for that company "has been the foundation of our data warehousing products, which are widely implemented in the U.S. business and healthcare industry." As example[redacted] indicates that the

petitioner's product is used by Amazon.com and Expedia.com to recommend products to customers and CIGNA uses the technology to detect patterns of insurance history.[1]

[redacted] Senior Staff Consultant at International Business Machines (IBM), states:

> For the past two years, I have been working to implement E.piphany's software products. And millions of American citizens have benefited from a better, streamlined and customized claim process which is built on top of [the petitioner's] research results.

[redacted] a Senior Consultant at PeopleSoft, Inc., not only praises the petitioner's work and provides general attestations of his influence, he specifically states that the petitioner's work "has dramatically influenced the development of modern analytics software application, including PeopleSoft's customer relationship management and financial management products."

[redacted] provides:

> [The petitioner's] work has deep technical insight into the challenges of Internet navigation as evidenced by his paper on "Stochastic Modeling of Usage Patterns in a Web-based Information System." [The petitioner made a breakthrough in continuous-time stochastic process-based analysis of user interaction. By factoring duration time into his model, his approach is able to predict, with a high degree of precision, what the user's next activity is, how soon the user is going to do that, and how many previous activities influence the user's decision.

The director also failed to consider the evidence that the petitioner has been moderately cited, with 10 independent research teams having cited one of his papers and a smaller number citing other work. Less persuasive, but notable, the petitioner also produced evidence that his work is frequently downloaded from UC Berkeley's website.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process.

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[1] The record also contains a letter from [redacted] Vice President of the Product Development Group at E.piphany, but his letter must be discounted. Specifically, [redacted] asserts that the petitioner "co-developed and patented one of E.piphany's leading products – E.Marketing metadata (PAT# 6,212,524)." Patents are publicly available records accessible at www.uspto.gov. A review of these records reveals that this patent was filed in 1998, two years prior to the petitioner's arrival at E.piphany and the petitioner is not listed as an inventor. Thus, none of [redacted] assertions carry any evidentiary weight. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). While this discrepancy could be a basis for rejecting other evidence submitted by the petitioner, we have verified much of that documentation via the Internet. Thus, while the demonstrably false statement by [redacted] is disturbing, it appears to reflect solely on the credibility of [redacted] nd counsel, who repeats [redacted] claim. The petitioner himself, who authored the appeal, never claims to be the named inventor on any patented technology.

Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.